

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CLIFFORD BECK,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

) Case No. DISM-03-0089

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the Washington State University, Compton Union Building, Room 7/9, Pullman, Washington, on August 12 and 13, 2004.

1.2 **Appearances.** Appellant Clifford Beck was present and was represented by Timothy Esser, Attorney at Law. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, insubordination, mistreatment or abuse of co-workers, and violation of the university's policy on workplace violence. Respondent alleges that Appellant engaged in a verbal and physical conflict with a co-worker.

II. FINDINGS OF FACT

2.1 Appellant Clifford Beck was a Driver-Warehouse Worker and permanent employee for Respondent Washington State University (University). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on October 9, 2003.

2.2 Appellant began his employment with the University in 1999. Appellant had a good performance record and had no history of prior formal discipline; however, he received a letter of reprimand on February 27, 2003, for using university resources for personal purposes.

2.3 By letter dated September 29, 2003, Lee N. Hatley notified Appellant of his dismissal effective at the end of his shift on Monday, September 29, 2003. Mr. Hatley charged Appellant with neglect of duty, gross misconduct, insubordination, mistreatment or abuse of coworkers, and violation of the University's Workplace Violence Policy 50.30. Specifically, Mr. Hatley alleged Appellant engaged in a physical and verbal conflict with co-worker, Erick Huffstutler. Mr. Hatley wrote:

You are being disciplined for engaging in a verbal and physical conflict with Erick Huffstutler, Truck Driver Lead, on the back of the loading dock, near the time clock, of the Food Service Building on Tuesday, July 22, 2003, at approximately 6:50 a.m.

....

... Your written and oral statements indicate you do not feel that you have any responsibility for what occurred on July 22, 2003, between yourself and Mr. Huffstutler. The versions of the incident as presented by you are different than the version of the incident presented by Mr. Huffstutler. Since there were no witnesses to the start of the altercation, it cannot be determined as to who actually provoked whom. It can be determined that you had opportunity to walk away from the incident and report the matter to your supervisor or myself. Instead of

1 walking away, you chose to put down your personal items and walk towards Mr.
2 Huffstutler. Instead of walking away, you conscientiously (sic) chose to stay
3 enthralled (sic) in a potentially volatile situation.

4 2.4 Appellant claims that on July 22, 2003, he acted in self-defense because Mr. Huffstutler was
5 the aggressor and assaulted him. Appellant also testified that Mr. Huffstutler, for a period of years,
6 subjected him to harassing, offensive and abusive behavior, which included calling him “faggot”
7 and “fucker,” as well as making derogatory and profane comments about the Appellant’s wife.
8 Appellant testified that during the July 22 incident, he turned and walked away from Mr. Huffstutler
9 twice, but did not turn away a third time because he was uncertain what Mr. Huffstutler would do
10 next. Appellant reported Mr. Huffstutler’s harassing behavior to his supervisors, management, and
11 to the Human Resources (HR) Department. To corroborate his testimony regarding Mr.
12 Huffstutler’s harassing behavior, Appellant presented the following testimony:

- 13 • Toby Valdez has been employed at the University since 2001 and worked as a
14 part-time employee in the Furniture Warehouse. Mr. Valdez heard Mr.
15 Huffstutler on more than one occasion call Appellant “faggot” and “fucker.”
- 16 • Jeff Maupin has been employed by the University for approximately five years.
17 He currently works in the payroll department but previously worked as a Truck
18 Driver/Warehouse Worker. Mr. Maupin heard Mr. Huffstutler call Appellant
19 “faggot” or “fucker” each time Mr. Huffstutler walked by Appellant. On one
20 occasion Mr. Maupin heard Mr. Huffstutler tell Appellant, “Your wife gives a
21 good blow job.” Mr. Maupin observed Mr. Huffstutler “flip off” Appellant. Mr.
22 Maupin never observed Appellant do or say anything to provoke or antagonize
23 Mr. Huffstutler. Mr. Maupin made reports to management and the HR
24 Department regarding Mr. Huffstutler’s behavior and comments.
- 25 • Jack Bashaw was a 31-year employee of the University and is currently retired.
26 Mr. Bashaw observed Mr. Huffstutler “flip off” Appellant, and call him “faggot”
and “son of a bitch.” Mr. Bashaw testified that Mr. Huffstutler subjected
Appellant to this type of treatment on a daily basis for several years. Mr. Bashaw
observed Appellant consistently walk away from Mr. Huffstutler, and he never
witnessed Appellant provoke Mr. Huffstutler. Mr. Bashaw testified that Mr.
Huffstutler also acted in an abusive manner toward him, which included yelling,
throwing boxes and using profanity. Mr. Bashaw also reported Mr. Huffstutler’s
behavior to his supervisor, management and the HR Department.

- Virgil Schluter was a 32-year employee of the University. He testified that Mr. Huffstutler harassed Appellant on a continuing basis. Mr. Schluter also testified that prior to Appellant's employment in Vending, he was the subject of Mr. Huffstutler's harassment, which included Mr. Huffstutler calling him "fatty," "faggot" and "son of a bitch." Mr. Schluter reported Mr. Huffstutler's behavior to management and the HR Department.
- Sam Miller, who retired on June 30, 2001, was the Associate Director of Vending Services. Mr. Miller testified that in fall 2000, he conducted an investigation after Appellant filed a complaint against Mr. Huffstutler. Mr. Miller interviewed Appellant, Mr. Huffstutler, Mr. Schluter and Mr. Bashaw. Mr. Miller subsequently issued a memorandum entitled "Investigative Findings of Cliff Beck's claims Against Erick Huffstutler," to Jerry Marczynski, Director of Housing and Dining Services. In the memo, Mr. Miller indicated, "it is only a 'he said, you said' unsubstantiated incident. ..." Following this investigation, Mr. Miller met with his staff to discuss appropriate workplace behavior; however, during his testimony before us, Mr. Miller stated that his written report had been misinterpreted by the University and that as a result of his investigation, he concluded that Mr. Huffstutler was harassing Appellant. Mr. Miller found Appellant's behavior to be exemplary and that Appellant repeatedly ignored Mr. Huffstutler's harassment.

2.5 Mr. Huffstutler testified that on July 22, 2003, Appellant was the aggressor and provoked the altercation that morning. Mr. Huffstutler testified that on the morning of July 22, he was at the time clock when Appellant walked by and asked him, "What the fuck are you looking at?" Mr. Huffstutler claims that he heard footsteps behind him when he was pushed against the wall by Appellant, causing the lid of his disposable coffee cup to come off. Mr. Huffstutler admits he threw his coffee at Appellant because he "was coming at me." Mr. Huffstutler also denied he ever engaged in any harassing or offensive behavior toward Appellant or others. However, in light of the consistent testimony from the above witnesses, we do not find Mr. Huffstutler to be a credible witness nor do we find his version of the events believable. Specifically, we find that since there was no coffee spilled on Mr. Huffstutler, it was impossible for him to have been pushed against the coffee-drenched wall, as he claims in his version of events.

1 2.6 Rather, we find that on the morning of July 22, Appellant was already present at work when
2 Mr. Huffstutler arrived. Mr. Huffstutler was standing by the time clock when he saw Appellant.
3 Mr. Huffstutler called Appellant a “fucking faggot.” When Appellant walked away, Mr. Huffstutler
4 took Appellant’s time card and flipped it onto the floor. Appellant told Mr. Huffstutler “leave my
5 Goddamn timecard alone,” and walked away. Mr. Huffstutler threw the contents of cup at
6 Appellant, causing coffee to land on the back of Appellant’s jacket. Appellant told Mr. Huffstutler,
7 “Well, that’s real mature. Peter’s going to enjoy this.” Appellant was referring to Peter Richards,
8 their supervisor.

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10 2.7 Appellant walked away to report Mr. Huffstutler’s actions to Mr. Richards. However, Mr.
11 Huffstutler followed him and slapped Appellant on the side of the head, which caused Appellant’s
12 hat and sunglasses to fall off. Mr. Huffstutler began slapping Appellant, and Appellant put his arms
13 up in a defensive manner. Rob Losh was working in the Furniture warehouse located adjacent to
14 the dock when he heard scuffling and slapping noises. When Mr. Losh realized there was a
15 problem, he intervened and separated Appellant and Mr. Huffstutler.

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17 2.8 The University’s Business Policies and Procedures Manual, Policy 50.30, in relevant part,
18 states as follows:

19 The University is committed to maintaining an environment that is free from all acts or
20 threats of violence perpetrated by or against employees

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22 The policy defines workplace violence as “any physical assault, threatening, or intimidating
23 behavior, or verbal abuse occurring in the workplace.” The policy further indicates as follows:

24 **Procedures**

25 **Immediate Threat**

26 Any employee who perceives an immediate threat of bodily harm should:

- Contact police immediately.

- Disengage and evacuate the area.
- Isolate the threatening individual if it is safe to do so.
- Notify the supervisor.
- Do whatever is reasonable to keep other employees from potential harm.

....

2.9 After considering the University's policy and the long history of abuse and harassment Appellant endured from Mr. Huffstutler, we find that Appellant had a reasonable belief that Mr. Huffstutler could cause him physical harm and acted to protect himself. Therefore, under the circumstances, Appellant's defensive actions were not unreasonable.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that both Appellant and Mr. Huffstutler were culpable for engaging in workplace violence, which included both a physical and verbal confrontation. Respondent asserts the University did not determine who initiated the fight, but argues Appellant could have walked away at any point. Respondent argues Appellant had been previously advised about his behavior and received prior warning not to engage in verbal or physical confrontations with coworkers. Respondent also argues Appellant attended training, and received the University's policy on violence in the workplace. Respondent asserts the University had a duty to protect its employees from workplace violence and dismissal is the appropriate sanction.

3.2 Appellant asserts he was assaulted and was the victim of violence. Appellant argues that the University's policy does not require an individual who is physically attacked to "walk away." Appellant asserts that the policy says that if you are the victim of assault, you can fight back. Appellant asserts that in his case, when struck from behind by Huffstutler, he placed himself in defensive position to avoid Mr. Huffstutler's slaps. Appellant denies he was ever warned about his workplace behavior and asserts that setting out workplace policies and expectations is not a warning

1 to employees. Appellant contends he and other staff repeatedly complained to management about
2 Mr. Huffstutler's behavior, but management failed to take action or intervene. Appellant asks to be
3 fully reinstated to his former employment.

4 5 **IV. CONCLUSIONS OF LAW**

6 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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8 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
9 the charges upon which the action was initiated by proving by a preponderance of the credible
10 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
11 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
12 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

13
14 4.3 The University, through its Workplace Violence Policy, has committed to maintaining an
15 environment where employees are free from all threats of physical assault, intimidating behavior, or
16 verbal abuse. Appellant provided compelling testimony that he tolerated Mr. Huffstutler's behavior
17 until the point where Mr. Huffstutler acted out physically and he was forced to defend himself. The
18 University has argued it has a duty to protect its employees from workplace violence. However, it
19 failed in its duty to protect the Appellant from Mr. Huffstutler's abusive behavior, even after
20 Appellant and others made credible complaints. By failing to take action as required by its own
21 policy, the University may have contributed to the events of July 22, 2003.

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23 4.4 Respondent has failed to meet its burden of proving by a preponderance of the credible
24 evidence that Appellant's actions during the altercation with Mr. Huffstutler constituted
25 misconduct. We do not condone violence in the workplace; however, there was clear evidence of a
26 long history of harassment by Mr. Huffstutler not only toward Appellant, but also toward other

1 employees. Under the circumstances, Appellant's actions were mitigated and do not warrant
2 disciplinary action. Therefore, the appeal of Clifford Beck should be granted.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Clifford Beck is granted.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Gerald L. Morgen, Vice Chair

Busse Nutley, Member